

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

TRANSAMERICA LIFE INSURANCE COMPANY,)
WESTERN RESERVE LIFE ASSURANCE CO. OF)
OHIO, and TRANSAMERICA FINANCIAL LIFE)
INSURANCE COMPANY,)

Plaintiffs,)

vs.)

LINCOLN NATIONAL LIFE INSURANCE)
COMPANY,)

Defendant.)

CASE NO.: 1:06-CV-00110-MWB

LINCOLN NATIONAL LIFE INSURANCE)
COMPANY,)

Defendant/Counterclaimant,)

vs.)

TRANSAMERICA LIFE INSURANCE COMPANY,)
WESTERN RESERVE LIFE ASSURANCE CO. OF)
OHIO, and TRANSAMERICA FINANCIAL LIFE)
INSURANCE COMPANY,)

Plaintiffs/Counterclaim Defendants.)

**LINCOLN'S MOTION TO STRIKE AND
EXCLUDE AFFIDAVITS OF A. SCOTT LOGAN
AND RONALD A. ZIEGLER AND RELATED
SUMMARY JUDGMENT MATERIALS**

D. Randall Brown (IN #15127-49), PHV
(randy.brown@btlaw.com)
Gary C. Furst (IN #19349-64), PHV
(gary.furst@btlaw.com)
Carrie Marie Raver (IN# 25257-49), PHV
(carrie.raver@btlaw.com)
BARNES & THORNBURG LLP
600 One Summit Square
Fort Wayne, IN 46802
Telephone: (260) 423-9440
Facsimile: (260) 424-8316

Denny M. Dennis
Todd A. Strother
BRADSHAW, FOWLER, PROCTOR &
FAIRGRAVE, P.C.
Suite 3700
801 Grand Avenue
Des Moines, Iowa 50309-8004

ATTORNEYS FOR LINCOLN NATIONAL LIFE
INSURANCE COMPANY

Lincoln National Life Insurance Company files this Motion to strike and exclude the Affidavits of A. Scott Logan (*APP 1972-77* (Ex. RR)) (“Logan Affidavit”) and Ronald L. Ziegler (*APP 206-17*) (“Ziegler Affidavit”) and unauthenticated exhibits (*APP 256-387, 578-669, 1313-1495*) (Exhibits Q, S, T, Z and AA)). The Court should strike and exclude the Logan Affidavit, the Ziegler Affidavit and the unauthenticated exhibits when the Court considers Transamerica’s Motion for Summary Judgment. The Affidavits and unauthenticated exhibits fail to comply with Federal Rule of Civil Procedure 56(e), are untimely, exceed the scope of Logan’s initial expert report, exceed the scope of information provided regarding Ziegler’s testimony by the discovery deadline, fail to cite the Court’s claim construction, contain conclusory statements and improper legal conclusions and/or are unauthenticated.

For these reasons and the reasons in Lincoln's contemporaneously-filed, supporting brief, Lincoln respectfully requests that the Court strike and disregard the Logan Affidavit, the Ziegler Affidavit and unauthenticated exhibits.

Respectfully submitted,

s/ Carrie Marie Raver

D. Randall Brown (IN #15127-49), PHV
(randy.brown@btlaw.com)

Gary C. Furst (IN #19349-64), PHV
(gary.furst@btlaw.com)

Carrie Marie Raver (IN #25257-49), PHV
(carrie.raver@btlaw.com)

BARNES & THORNBURG LLP

600 One Summit Square

Fort Wayne, IN 46802

Telephone: (260) 423-9440

Facsimile: (260) 424-8316

ATTORNEYS FOR LINCOLN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 26, 2008, she electronically filed the above and foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Glenn Johnson, Esquire
Kevin H. Collins, Esquire
Sarah J. Gayer, Esquire
SHUTTLEWORTH & INGERSOLL, P.L.C.
500 U.S. Bank Building
Post Office Box 2107
Cedar Rapids, IA 52406

s/ Carrie Marie Raver
Carrie Marie Raver